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Part VII

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Economic Regulatory Administration

Unleaded Gasoline Production Incentives; Final Rule, Request For Comments, and Notice of Continued Rulemaking

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-30]

Mandatory Petroleum Price Regulations; Unleaded Gasoline Production Incentives

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule and request for comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts the following two amendments to the refiner price rules.

1. Refiners are permitted a production incentive to reflect increased production of unleaded gasoline.

2. Increased cost of additives attributable to gasoline shall be recouped on sales of gasoline. Under this rule, the cost of alcohol used in the production of gasohol will be recovered in prices charged for gasoline.

ERA is continuing this rulemaking with respect to its proposal to delete the provision in § 212.112(b)(1) which requires that a refiner that did not produce unleaded gasoline on May 15, 1973, shall impute to it the May 15, 1973, selling price of the grade of leaded gasoline having the nearest octane number plus one cent per gallon. ERA requests further comments on alternative methods to impute May 15, 1973, selling prices for the various types and grades of unleaded gasoline.

EFFECTIVE DATE: December 1, 1979.

Other dates: Comments by December 31, 1979, 4:30 p.m.

ADDRESSES: All comments to Public Hearing Management, Docket No. ERA-R-79-30, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

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William Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. 20461, (202) 634-2170

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William Mayo Lee (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6754.

SUPPLEMENTARY INFORMATION:

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II. Comments Received
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I. Background

On June 4, 1979, DOE issued a notice of proposed rulemaking and public hearing (44 FR 32622, June 6, 1979) regarding the price rules for unleaded gasoline. DOE held hearings on the proposed amendments in Los Angeles, California, on June 28, 1979, and in Washington, D.C., on June 26, 1979. DOE received comments concerning the proposed amendments from more than 30 interested parties.

In the notice of proposed rulemaking DOE proposed three amendments to the refiner price rules to provide incentives for refiners to increase production of unleaded gasoline. First, DOE proposed to permit refiners a production incentive to reflect increased production of unleaded gasoline. Second, it was proposed to permit additive costs attributable to the production of gasoline to be allocated entirely to gasoline. Third, changes in the method for imputing the May 15, 1973, selling price for unleaded gasoline by refiners which did not sell unleaded gasoline on May 15, 1973, were proposed.

II. Comments Received

Generally the comments favored DOE's proposal to permit refiners a production incentive for increased production of unleaded gasoline. In response to a specific comment request, most commenters requested that the unleaded production incentive be allocated to all gasoline refined by the refiner and not only to unleaded gasoline refined and sold by the refiner as DOE had proposed. In response to the comments, we have decided to permit the dollar amount of the production incentive to be included in increased cost passthroughs to all grades of gasoline and not only in the computation of the base selling price of unleaded gasoline.

We also requested comments as to whether the proposed production incentive will provide sufficient economic incentives to increase the production of unleaded gasoline, especially in light of the recently adopted "tilt" rule. Most refiners stated that the production incentive would encourage the increased production of unleaded gasoline in the short term from existing facilities. However, they stated that additional incentives would be required to encourage them to make capital investments to expand facilities to increase unleaded gasoline production. A number of methods were suggested by which the incentive can be increased and made more effective. On the other hand, one commenter suggested that ERA has inadequate data upon which to demonstrate that the production incentive will increase unleaded production. Upon evaluating all of the comments and information available to ERA, we believe that the rule will further the production of unleaded gasoline.

In the proposal we invited comments on whether refiners which opt to calculate maximum lawful selling prices using actual prices charged for unleaded gasoline on May 15, 1973, should be permitted to increase these prices to reflect the production incentive. Most commenters favored permitting all refiners to be allowed to include the production incentive in their gasoline prices regardless of whether actual May 15, 1973, prices are used in computing the maximum lawful selling price for unleaded gasoline. The principal rationale was that the incentive is needed to increase the production of unleaded gasoline from all refiners and not just from those firms which impute a May 15, 1973, selling price. One commenter stated that refiners that sold unleaded gasoline on May 15, 1973, should be required to use those prices unless they could show unusual circumstances or irreparable harm. The final rule will permit all refiners to include the production incentive in their computations.

We invited comments on whether the rule should be made effective on June 1, 1979. Approximately one half of the comments favored making the rules effective June 1, 1979, and the remaining comments opposed making the rules effective retroactively. As discussed *infra*, the rule will become effective on December 1, 1979.

Generally the commenters supported the proposal to allocate increased additive costs incurred in the production of gasoline directly and entirely to gasoline. The commenters stressed that such a rule change would permit more of the increased costs associated with producing gasoline to be recouped in prices charged for gasoline and thereby encourage gasoline production.

Comments were solicited on the proposed deletion of the provision in § 212.112(b)(1) which requires that a refiner that did not produce unleaded gasoline on May 15, 1973, shall impute to it the May 15, 1973, selling price of the grade of leaded gasoline having the

nearest octane number, plus one cent per gallon. We invited comments regarding alternative methods of imputing the May 15, 1973, selling price for unleaded gasoline, such as by the use of a fixed graduated octane rating pricing scale. We expressed our concern that the current rule may distort the production of types of unleaded gasoline with different octance ratings.

The commenters supported the intent of the proposal to amend the current method of imputing May 15, 1973, selling prices for different types of unleaded gasoline. However, most commenters believed the method proposed by DOE would not accomplish the purpose of the amendment as stated by DOE in the notice of proposed rulemaking. Various other alternatives were suggested. Accordingly, DOE is continuing the rulemaking with respect to this issue.

We also invited comments from environmental and consumer groups regarding the economic and environmental effects of the proposed amendments, particularly on the effect that increased availability of unleaded gasoline will have on retail prices of unleaded gasoline and its subsequent effect on reducing misfueling. One commenter, representing a consumer group, stated that ERA is mistaken in asserting that the retail price differential between leaded and unleaded gasoline will not increase as a result of the unleaded gasoline production incentive. He stated further that unless a rule is issued that places a cap on this differential, these rules would require the preparation of an environmental impact statement. This commenter recognized that rises in price at the refinery gate may be passed on to customers at the retail level, but provided no reason to show that refiners would, as a result of this rule, likely raise prices more on one grade of gasoline than another. For the reasons stated *infra*, we have concluded that this commenter's premise is incorrect and that the price differential will not increase as a result of the adoption of this rule.

III. Amendments

A. Production Incentive

The first amendment adopted today permits refiners a production incentive to reflect increased production of unleaded gasoline. Under the new rule refiners may increase the amount of "increased costs" which may be recouped on gasoline to reflect increased unleaded gasoline production over either 1978 levels or 33 percent, the 1978 national average production ratio of unleaded gasoline to total gasoline. The production incentive is a new cost factor in the computation of maximum allowable selling prices for gasoline.

Refiners shall calculate the production incentive as follows:

Option 1. Number of gallons of unleaded gasoline refined in the month of measurement, less the number of gallons of unleaded gasoline refined in the corresponding month in 1978, and multiplied by 2 cents per gallon, or;

Option 2. Number of gallons of unleaded gasoline refined in the month of measurement, less the product of the total amount of gasoline (both leaded and unleaded) refined in the month of measurement multiplied by 33% (the Environmental Protection Agency's estimate of the national monthly average production ratio of unleaded gasoline to total gasoline refined in 1978) and multiplied by 2 cents per gallon.

To illustrate the new rule, assume Refiner X refined the following amounts of gasoline in the month of measurement and in the corresponding month in 1978.

	Total	Unleaded	Leaded
1978	1,000,000	250,000	750,000
1979	1,000,000	400,000	600,000

Under Option 1 Refiner X would compute the production incentive as follows:

400,000 gals. − 250,000 gals. = 150,000 gals.
150,000 gals. × 2¢ per gal. = $3,000.

Under Option 2 Refiner X's production incentive would equal:

400,000 gals. − (33% × 1,000,000 gals.) = 70,000 gals.
70,000 gals. × 2¢ per gal. = $1,400.

Accordingly, Refiner X would elect to calculate the production incentive using Option 1.

Refiner Y, however, which refined a higher percentage of unleaded gasoline than the 1978 national average monthly production ratio, would elect to use Option 2. Assume Refiner Y refined the following amounts of gasoline in the month of measurement and in the corresponding month in 1978.

	Total	Unleaded	Leaded
1978	1,000,000	800,000	200,000
1979	1,000,000	850,000	150,000

Under Option 1, Refiner Y's production incentive would be $1,000 (850,000 gals. − 800,000 gals. × 2¢). However, under Option 2, Refiner Y's production incentive would equal $10,400.

850,000 − (33% × 1,000,000) = 520,000
520,000 × 2¢ = $10,400.00.

In calculating the maximum allowable price from gasoline, ("d_i") Refiners X and Y may allocate the total dollar amount attributable to the production incentive (as computed in the new subparagraph (j) and included in the "H" factor) to all gasoline refined in the month of measurement. Accordingly, Refiner X may add $3,000 and Refiner Y $10,400 to the amounts currently permitted under the regulations to be recouped in sales of gasoline.

B. Increased Additive Cost

ERA amends its refiner price rules to permit refiners to allocate the total cost increases attributable to additives, including process chemicals and alcohol, used in the production of gasoline to prices charged for gasoline.

Specifically, additives, defined as materials and compounds, including catalyst and process chemicals, which are attributable to refining gasoline shall be included in the "B" factor (§ 212.83(c)(2)(iii)(D)) and recouped in prices charged for gasoline. Additives attributable to refining products other than gasoline will continue to be included in the "N" factor (§ 212.83(c)(2)(iii)(E)(III)) and allocated to all petroleum products. Alcohol used in the production of gasohol is an additive, and its costs shall be recouped in prices charged for gasoline.

C. Effective Date

This rule will become effective on December 1, 1979. We are not persuaded that the rule should be made retroactive to June 1, 1979, the possibility of which was suggested in the proposal. The additional increased costs available to be passed through in gasoline prices prospectively should adequately reflect the incentive required to increase the production of unleaded gasoline.

The provisions of 5 U.S.C. section 553(d), generally requiring that a substantive rule may not be made effective less than 30 days following publication of the rule, do not apply to rules that grant an exemption, relieve a restriction, are interpretive or if the agency finds good cause for the rule's earlier effectiveness. In this instance, the rule partially relieves the restriction as to the prices refiners can charge for gasoline. Furthermore, while we are not convinced that the production incentive should be made retroactive, the incentive should be made effective as soon as possible to spur the production of unleaded gasoline.

IV. Continued Rulemaking

In the notice of proposed rulemaking DOE proposed (1) to delete the provisions in § 212.112(b)(1) which require that a refiner that did not produce a grade of unleaded gasoline on May 15, 1973, impute to it a May 15,

1973, selling price equal to the selling price of the grade of leaded gasoline having the nearest octane number plus one cent per gallon, and; (2) require the May 15, 1973, selling price be imputed using the weighted average price charged for all types and grades of gasoline.

Generally, DOE believes some change to the "nearest octane number" provision is desirable. Thus, DOE is continuing the rulemaking with respect to this provision and invites further comments regarding appropriate changes to the rule. In particular, comments are invited on the following alternative methods of imputing the May 15, 1973, selling price for unleaded gasoline.

1. Using the average price charged for all types and grades of gasoline;

2. Using a fixed graduated octane rating scale (for example, one cent per octane rating), or;

3. Using a sliding octane rating scale (for example, a proportionally higher cents per gallon for gasoline with a higher octane rating).

V. Regulatory Analysis

Under Executive Order No. 12044, *Improving Government Regulations*, the Department of Energy has prepared a regulatory analysis of this final rule which analyzes the economic impact on the general economy, individual industries, geographical regions, and levels of government. The analysis deals with two aspects of the rule adopted:

(1) The production incentive, and;

(2) The attribution to gasoline of the increased cost of additives used to make gasoline.

A. Unleaded Production Incentives

In analyzing the disincentive to produce unleaded gasoline created by the previous price rules, two cases were reviewed:

(1) The refining industry has no excess reforming capacity and can make increased volumes of unleaded gasoline only by diverting low octane components to refinery fuel; or alternatively,

(2) There is some spare reforming capacity so that added volumes of unleaded gasoline can be made at lower costs than in (1) above.

The analysis of increasing refinery production of unleaded gasoline shows that the prior "one-cent" rule does not encourage an increase in unleaded gasoline production in either of the above cases. However, an additional two-cent-per-gallon production incentive would create an incentive to utilize fully existing octane generating facilities to maximize supplies of unleaded gasoline. The added revenue would also encourage refiners to invest in the new processing equipment necessary to increase the output of unleaded gasoline as required by changes in the automobile fleet.

(a) *Costs of the Rule.* The rule provides for two pricing options: Under the first option refiners may add two cents per gallon to those gallons of unleaded gasoline made by them which exceeds the gallons made in the corresponding 1978 period. The second option allows them to add two cents per gallon to those gallons of unleaded produced in excess of the 1978 national average ratio of unleaded gasoline to total gasoline production, which was 33 percent.

Under the first option, the increased unleaded volume that would be made over the next few years is substantial. By the end of 1980, we anticipate refiners using this option will have installed new manufacturing facilities with a capacity of about 450 thousand barrels per day of unleaded gasoline. By the end of 1980, then, the maximum cost of the first option will be $125 million per year.

Under the second pricing option, public data on unleaded production percentages were available for seven refiners, which account for a third of the total market and include a wide range of unleaded percentages. These data were used as the base for estimating total industry volume under the second option, which is estimated to have a maximum cost annually of about $155 million by 1980.

By the end of 1980, the maximum cost for both the first and second options will be about $280 million per year. This is equivalent to about one-half cent per gallon of unleaded gasoline (if all of the costs were passed through solely on unleaded gasoline), or about one-quarter cent per gallon of all gasoline sold.

Consumers of unleaded gasoline may pay a part of this increased cost by paying a slightly higher retail price for the unleaded they buy. However, they are not expected to pay all of the increased cost, and may pay none of it. Two other groups could share the increased cost. Depending on the intensity of competition, it is possible that gasoline wholesalers and retailers may not be able to pass through to consumers the full amount of the refinery gate price increase. Therefore, these groups may be forced to absorb a portion of the cost. It also appears that the largest part of the cost increase could be paid by consumers of leaded regular gasoline. This could occur if the increased supply of unleaded that becomes available as a result of the incentive is partially at the expense of leaded gasoline production.

(b) *Benefits of the Proposed Rule.* The benefits of the rule lie in the industry's ability to manufacture increased percentages of unleaded gasoline. Based on the industry's installed capital equipment, one can roughly estimate that processing capability exists to increase unleaded gasoline output by approximately 500,000 barrels per day by the end of 1980.

It is estimated that the U.S. motor gasoline pool consists of approximately 40 percent of the combination of catalytic cracked and alkylated stocks. These two conversion processes usually operate concurrently. The gasoline components thus manufactured are generally suitable for blending directly into unleaded gasoline without the need for octane improvements produced from processing chemicals or additives.

It is also estimated that catalytic reformate comprises another 30 percent of the U.S. motor gasoline pool. It is assumed that at least half of the U.S. reformate manufacture is of suitable quality for direct blending to unleaded grades.

When U.S. cracking, alkylation and high octane reformate stocks are totaled and supplemented with butane for vapor pressure control, it is estimated that the existing U.S. refining industry could in aggregate supply in excess of 50 percent of its gasoline output as unleaded, under the available economic incentives provided by the rule. Longer-term incentives may be created for refiners to install additional octane improvement facilities which will be needed to supply the volumes of unleaded gasolines that will be demanded in the mid to late 1980's.

Increased unleaded gasoline supply should benefit consumers. Service station "run outs" of unleaded will be essentially eliminated as the percentage of unleaded gasoline available to consumers will be in line with the percentage of this product demanded by automobiles equipped with catalytic converters. Of course, to the extent that gasoline price controls effectively inhibit total gasoline supply to a quantity less than demanded at the controlled price, shortages of both grades will continue. However, these shortages will not, as in the recent past, be more severe for unleaded grades.

As a result of increased supplies of unleaded gasoline, a lower fraction of vehicles equipped with catalytic converters is expected to be misfueled. This will have substantial environmental benefits and will help safeguard consumers' already large and growing investments in catalytic

converters (estimated at about $7 billion in the aggregate). Each catalytic converter costs about $200–300 to replace. Only two tankfuls of leaded gasoline can render some catalysts ineffective. As a result, there can be an eight-fold increase in emissions of hydrocarbons and carbon monoxide from such vehicles, which will delay many parts of the country in achieving attainment of acceptable air quality. Misfueling also causes lead buildup on spark plugs and valves, with consequent detuning and loss of fuel efficiency.

(c) *Effect on the Leaded/Unleaded Price Differential.* For the past 2 or 3 years, unleaded supply has been short relative to leaded supply. The U.S. average retail price differential between these grades until recently had been larger than the refinery gate price differential. The refiner differential, about four cents a gallon greater for unleaded gasoline, represented the refiners' concept of the higher cost of unleaded production or market demand or both, while the larger differential at the pump was caused by reduced margins for the leaded product. Under present conditions, with supply of all gasoline types and grades more closely in balance, the retail price differential more closely approximates the refiner price differential. Increased unleaded production could possibly change the supply balance in favor of that grade and result in more increased costs being assigned to leaded gasoline to balance demand for that grade.

In March of this year, DOE adopted the gasoline "tilt" regulation (44 FR 15600, March 14, 1979). Since that time, crude oil prices have also increased substantially. Both the tilt and increased crude prices have caused refiners to have large volumes of increased costs which they are permitted to allocate to the prices of any grade of gasoline. Thus the current regulations have not prevented the price differential between grades from increasing. However, since March, the refiner price differential between grades has not increased, but has decreased slightly. Thus, since refiners have not used the opportunity presented them as a result of increased costs from higher crude oil prices and the additional increased costs recoverable under the "tilt" regulation to increase the price differential, we do not expect the relatively small additional volume of increased costs available as a result of the adoption of the unleaded gasoline production incentive to increase the retail price differential between leaded and unleaded gasoline.

B. The Allocation of the Increased Cost of Additives Used in Gasoline to Gasoline

Under current rules, refiners are required to allocate increases (above the base level) in expenditures for additives on a volumetrically proportional basis to all the petroleum products which they produce. (The recent gasoline "tilt" regulation allows somewhat more than a strict volumetric portion to be allocated to gasoline, but a portion must continue to be allocated to other products.) However, some additives serve purely to enhance the quality or quantity of one product. This is particularly true of the chemicals such as lead, and MMT which are used to increase the octane quality of gasoline. The effect of not allowing the full cost of producing gasoline to be passed through in the prices charged for gasoline is that refiners have less incentive to produce more gasoline, particularly unleaded gasoline, than they do to produce greater volumes of other products.

a. *Cost of the Change in the Allocation of Increased Additive Costs.* Currently the cost of lead in gasoline averages about 0.8 cents per gallon of total gasoline. Of this, about 0.3 cents is fully allocable to gasoline and about 0.5 cents is allocable approximately equally to gasoline and other products. Consequently, prior to the adoption of the "tilt," about 0.55 cents was allocated to gasoline. Since the adoption of the "tilt," about 0.65 to 0.7 cents per gallon can be allocated to gasoline. The new additive rule will permit the passthrough on gasoline prices of the balance—0.1 to 0.15 cents per gallon, or $115 million to $175 million per year. As other anti-knock additives, catalysts and chemicals are used to produce gasoline, including ethyl alcohol (ethanol) to produce "gasohol," these costs will rise.

b. *Benefits of the Change in the Allocation of Increased Additive Costs.* The benefits are both a more equitable allocation of costs and an economic incentive to produce added volumes of gasoline. Under a mixed system of controlled and uncontrolled prices, careful attention must be given to ensure equitable allocation of incurred costs. In a multi-product industry, such as petroleum refining, cost allocations tend to become complex, and there may be a tendency for them to be arbitrary. But there is no reason to allocate the cost of gasoline additives and of other chemicals used in the manufacture of gasoline to products other than gasoline or to have the users of such products (such as consumers of home heating oil) in effect subsidize the cost of producing gasoline. In addition, the rule change will, as noted above, remove an existing regulatory disincentive to increased gasoline manufacture.

VI. Procedural Matters

A. Written Comments.

DOE will accept written comments on the final rules adopted today and the continued rulemaking through December 31, 1979. DOE is permitting this extended period to allow interested parties to submit additional comments on appropriate changes or amendments to the rules once they are in effect.

B. FERC Review

Under section 404(a) of the Department of Energy Organization Act, Pub. L. 95–91 (DOE Act), the proposed rule was referred to the Federal Energy Regulatory Commission (FERC) for a determination as to whether it may significantly affect any function within the jurisdiction of the FERC under sections 402(a)(1), (b) and (c)(1) of the DOE Act. The FERC has notified ERA that it has declined to make such a determination.

C. NEPA Review

Under DOE's Proposed Guidelines for Compliance with the National Environmental Policy Act (44 FR 42136, July 18, 1978), the DOE has determined that the adoption of this rule is not a major Federal action significantly affecting the quality of the environment. Thus the preparation of an environmental impact statement is not required.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below effective December 1, 1979.

Issued in Washington, D.C., November 14, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Section 212.83(c)(2)(iii)(D), the "B" factor, is amended by revising the following sentence in the definition of "B_i:"

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *

(2) *Formulae*—* * *

(iii) *Definitions.* * * *

(D) *The "B" Factor* * * *

"$B_i t$" is the total increased cost of the specific covered product or products of the type "i" purchased or landed in the period "t," provided such cost is not included in computing "A_t." The cost of a specific covered product or products of the type "i" shall include the cost of a product or products not of the type "i" which was a covered product as of May 31, 1976, and is purchased and refined or blended, that is attributable to the production of the covered product or products of the type "i." Beginning December 1, 1979, with respect to category "i"=3, the cost of gasoline shall include materials and compounds, including catalyst, alcohol, and process chemicals, that are purchased and refined or blended and are attributable to the production of gasoline. The cost and quantity of covered products purchased or landed that are consumed as refinery fuel shall be excluded from this amount.

Where:

* * * * *

2. Section 212.83(c)(2)(iii)(E)(III), *additive cost increase,* is revised to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *

(2) *Formulae*—* * *

(iii) *Definitions.* * * *

(E) *The "N" Factor* * * *

(III) *Additive cost increase.* Additive cost increase is computed by applying the formula for "$E_n t$" above. For purposes of this computation "C" refers to the total dollar amount of costs incurred for materials and compounds, including catalyst and process chemicals which were not covered products as of May 31, 1976, and which are added to, use for, or blended with crude oil or covered products during or in conjunction with the refining process to produce products other than gasoline.

* * * * *

3. Section 212.83(c)(2)(iii)(G) is amended by revising the definition of "$H_i{}^u$" to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *

(2) *Formulae*—

(iii) *Definitions.* * * *

(G) *The "H" Factor.*

$H_i{}^u$ = For i = 1, i = 2, and i = 4, the portion, if any, of the total dollar amount available in the period "u" for inclusion in price adjustments to the product of the type "i" that pursuant to paragraphs (d) or (e) of this section the refiner elects to include in prices of gasoline for the period "u" (in which case "$H_i{}^u$" shall be subtracted); for i = 3, the portion, if any, of the total dollar amount available in the period "u" for inclusion in price adjustments to No. 2 oils aviation jet fuel, or general refinery products that pursuant to paragraphs (d) or (e) of this section the refiner elects to include in the price of gasoline for the period "u" (in which case "$H_i{}^u$" shall be added), plus the unleaded gasoline production incentive as defined in § 212.83(j).

* * * * *

4. Section 212.83 is amended to add a new paragraph (j) to read as follows:

§ 212.83 Price rule.

* * * * *

(j) *Unleaded gasoline production incentive.* Beginning December 1, 1979, a refiner may include in the calculation of "$d_i{}^u$" for "i" = 3 (gasoline) a dollar amount equal to either: (1) The number of gallons of unleaded gasoline refined in the month of measurement, minus the number of gallons of unleaded gasoline refined in the month in 1978 corresponding to the month of measurement multiplied by two (2) cents per gallon; or, (2) the number of gallons of unleaded gasoline refined in the month of measurement minus the product of the total number of gallons of gasoline refined in the month of measurement multiplied by 33 percent and further multiplied by two (2) cents per gallon.

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DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-30]

Unleaded Gasoline Production Incentives; Continued Rulemaking

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Continued Rulemaking.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a continued rulemaking regarding a portion of the Notice of Proposed Rulemaking entitled Unleaded Gasoline Production Incentives (44 FR 32622, June 6, 1979). Specifically, DOE is continuing the rulemaking with respect to its proposal to delete the provision in § 212.112(b)(1) which sets forth the rules that a refiner that did not produce unleaded gasoline on May 15, 1973, shall use to impute a May 15, 1973, selling price for unleaded gasoline.

A discussion of the continued rulemaking and the comment procedure is found in the final rules issued November 14, 1979, entitled Unleaded Gasoline Production Incentives. (See FR Doc. 79-35656, in this issue of the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Mr. William Mayo Lee, Office of the General Counsel, (202) 252-6754.

Issued in Washington, November 27, 1979.

F. Scott Bush,

Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

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